IN THE HIGH COURT OF JUDICATURE OF BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPLICATION NO.595 OF 2005
IN
COMPANY PETITION NO.964 OF 2002
WITH
SHOW CAUSE NOTICE NO.4 OF 2006

M/s.SATA Farbspritzetchnik Gmbh & Co. ..Petitioners.

V/s.

M/s.M.Baker Auto Refinishing Pvt.Ltd. ..Respondents.

Mr.Darshan Mehta i/b. Dhru Liladhar & Co. for applicant.

Mr.S.Ramakantha, Dy.O.L.present.

CORAM: A.M.KHANWILKAR,J

DATE : NOVEMBER 26, 2007.

P.C. :

1. By the present Company Application, the Original Petitioner seeks following reliefs.

> "(a) that pending the hearing and final disposal of the Company Petition Official Liquidator, High Court, Bombay, or some other fit and proper person may be appointed as the Provisional Liquidator of the Respondent-Company including its book of accounts and all movable and immovable assets with all powers under the Companies Act, 1956;
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> (b) that pending the hearing and final disposal of the Company Petition the Respondent-Company, its officers, servants and agents be restrained by an Order and injunction of this Hon'ble Court from in any manner dealing with, disposing of, alienating, parting with or in any manner encumbering any of its assets in any manner whatsoever;
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> (c) that pending the hearing and final

disposal of the Company Petition the Respondent-Company its officers, servants and agents be restrained by an Order and Injunction of this Hon'ble Court from in any manner transferring any of its shares from the name of its existing share-holders to an in favour of anybody whomsoever in any manner whatsoever;

(d) that pending the hearing and final disposal of the Company Petition the Respondent Company be directed to deposit DM equivalent to a sum of Rs.9,00,000/- in the Petitioners Bank Account No.7322001, Bank Area Code 60440073 in Commerz Bank Ludwigsburg in Germany;

(e) for ad-interim relief in terms of prayers (a),(b), (c) and (d) above;

(f) for costs of this Company Application; and

(g) for such other and further reliefs as the nature and circumstances of the case may require:"

2. It is not in dispute that the Company Petition No.964 of 2002 filed by the Petitioner/applicant is already admitted on 1st August, 2003. During the pendency of the said Petition, Applicant took out Application being Company Application (Lodg.) No.141 of 2004 inter alia for appointment of Official Liquidator as Provisional Liquidator. The said application came to be disposed of on July 1, 2004 by the Company Judge. On that occasion, representation was made on behalf of the Respondent-company that an amount of Rs.9 Lakhs will be paid by the Respondent-company towards full and final settlement of the claim in the company petition

No.964 of 2002. The Respondent-company has failed to abide by the said assurance given to this Court. As a result the Petitioner/applicant has preferred the present Application for the reliefs, as indicated earlier.

3. So far as relief (a) is concerned, that is already worked out in view of the Order passed by the Company Judge in Company Petition No.349 of 2003. Official Liquidator has already been appointed as Provisional Liquidator in respect of the respondent company.

4. In the present Application, this Court ordered issuance of bailable warrant against the Managing Director of the respondent-company. Perhaps that course was adopted to ensure presence of the Managing Director before deciding the present Application. However, the fact remains that the Provisional Liquidator has already been appointed in respect of the respondent-company. As a necessary corollary, question of respondent-company being in a position to comply with the assurance given to this Court as recorded in Order dated July 1, 2004 does not arise.

5. Thus understood, in my opinion, the

Application will have to be disposed of leaving all questions on the merits of the contentions open, to be decided in the pending Company Petition, which is already admitted and will be proceeded for hearing alongwith the companion Company Petition No.349 of 2003.

6. The necessity of executing bailable warrant also does not survive, as the Managing Director of the Respondent- company, as pointed out by the Official Liquidator, has already appeared in the proceedings before the Provisional Liquidator on 18th June, 2007 and he is expected to appear on all future dates. It is however, made clear that in the event no representation is made on behalf of the respondent-company before the Official Liquidator or in the pending court proceedings in future, it will be open to the Official Liquidator as well as the Applicant herein to take out application for initiating appropriate action against the Managing Director, as and when required. That application will be considered on its own merits.

7. For the aforesaid reasons, present Company Application as well as Show Cause Notice No.4 of 2006 are disposed of.

(A.M.KHANWILKAR,J)